IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6147 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT B PATEL

Versus

GOVT OF GUJARAT

Appearance:

MR JD AJMERA for Petitioner

MS MANISHA LAVKUMAR, Ld. AGP for Respondent No.1 & 2

MR MP PRAJAPATI for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner challenged the order dated 3rd April, 1991 at Annexure "O" to the petition made by the State Government, by which, while upholding the order of District Education Officer, Vadodara dated 8-2-1977, by which the petitioner was declared surplus, the State Government also rejected the prayer of the petitioner for being given deemed date in the post of Senior Clerk from

16-6-1969 on the ground that there was no provision in the Rules at the relevant time for giving any promotion from the post of Junior Clerk to Senior Clerk.

2. In this petition, the petitioner's claim is confined to promotion and it was argued by the learned Advocate appearing for the petitioner that the decision of the State Government that the petitioner was not entitled to promotion, cannot be sustained.

3. The petitioner himself had raised his claim before the State Government in a representation. Earlier, the management had, before the High Court in its Special Civil Application No.1703/1989, challenged the order made by the Government on 1-2-1988 by which the present petitioner was directed to be absorbed in the school. The High Court held by its order dated 30th July, 1990 that since the order was against the interest of the School Management which was not heard, the representation of the present respondent was required to be decided in accordance with law, after hearing School Management. Accordingly, the State Government heard the parties and the impugned order came to be passed, in which the question whether the petitioner was entitled to be promoted or not also came to be decided by the State Government.

4. Under Section 38 of the Gujarat Secondary Education Act, 1972, it has been provided that where there is any dispute or difference between the manager of a registered private secondary school and any person in service of such School as head-master, a Teacher or a member of non-teaching staff, which is connected with the conditions of service of such person, the manager or, as the case may be, the person may make an application to the Tribunal for the decision of the dispute. Under Sub-Section (2) of Section 38, it was provided that as from the appointed day the State Government or any officer of the State Government shall have no jurisdiction to decide any dispute of the nature referred to in Sub-Section (1) and any such dispute pending before the State Government or any officer of the State Government immediately before the appointed day shall, as soon as may be, after the appointed day, be transferred to the Tribunal for its decision.

5. It is clear from the aforesaid provision that the State Government had no jurisdiction to decide the question as to whether the petitioner was entitled to be promoted from the post of Junior Clerk as Senior Clerk. If at all he wanted to stake such a claim, the proper

forum was the Tribunal and not the State Government. The learned Advocates appearing for all the parties have also submitted that the order of the State Government in this regard was not warranted in view of the provisions of Section 38 of the said "Act", since the jurisdiction of the State Government was ousted. Therefore, the impugned order to the extent that it decides the question as regards the entitlement of the petitioner to promotion from the post of Junior Clerk to Senior Clerk is made without jurisdiction. The impugned order is, therefore, to that extent hereby set aside. Rule is made absolute accordingly, with no order as to costs.

7-9-2000 (R.K.Abichandani, J.)

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